

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DR. MARKCUS KITCHENS, JR.,

Plaintiff,

v.

**NATIONAL BOARD OF MEDICAL
EXAMINERS,**

Defendant.

Case No. 2:22-CV-03301-JFM

**NOTICE OF NBME’S OBJECTIONS TO PLAINTIFF’S
EXHIBIT DESIGNATIONS IN ADVANCE OF PRE-TRIAL CONFERENCE**

The parties have not raised many exhibit objections, and many of NBME’s objections to Plaintiff’s exhibits were based on technical issues (incomplete documents, etc.) rather than evidentiary rules. NBME respectfully submits that it may be more efficient to reserve any objections and rulings until the time of trial, but it is also providing the following information in advance of the pretrial conference for the Court’s reference.

NBME’s objections fall into the following categories:

1. Prior written testimony

Dr. Kitchens has included the declaration he filed in support of his motion for preliminary injunction (Dkt. 20-1), the declaration of Missie King (Dkt. 25), and the declaration of Alyssa Hanna (Dkt. 15 at p. 12) as exhibits. NBME objects to the introduction of these exhibits by Dr. Kitchens on hearsay grounds. NBME is not attaching copies of these documents to this filing given that they are already filed on the docket and to avoid overburdening the Court, but it will have copies available for reference during the pretrial hearing if needed.

2. Excerpt from Medical University of Lublin handbook

Dr. Kitchens has designated certain pages from the MUL handbook. It is not clear what this excerpt is being offered to show, so NBME has reserved any objection to the time of trial. This document is attached at Exhibit A.

3. SAIL Program document

This document appears to relate to Newtown Public Schools, which is not where Plaintiff attended school, and it therefore appears to be entirely irrelevant. There is also no indication where this document came from, and it is unlikely that Plaintiff or any of his witnesses have first-hand knowledge of this document. NBME objects to this exhibit on the grounds of authenticity, foundation, and hearsay. This document is attached at Exhibit B.

4. Residency website information

Dr. Kitchens has designated website information from the University of Tennessee, the University of Kentucky, and the University of Colorado regarding residency application criteria. Dr. Kitchens does not appear to have any witness with first-hand knowledge to testify to this hearsay material, which is also not relevant to the issues in the case. These documents are attached at Exhibit C.

5. FSMB criteria

Dr. Kitchens has designated website information from the Federation of State Medical Boards regarding initial medical licensure requirements, and this information is also found on the joint exhibit designation list. This document is not relevant to the dispute and Dr. Kitchens does not appear to have any witness with first-hand knowledge to testify to this hearsay material. These documents are attached at Exhibit D.

6. Articles

Dr. Kitchens' designations included some medical articles, although this may have been a typographical error. To the extent Dr. Kitchens intends to include the articles as exhibits, NBME objects based on lack of foundation, hearsay, and relevancy. This material is attached at Exhibit E.

7. Composite Committee Actions Regarding Expunged Records

NBME has made a provisional objection to this document on the grounds of relevancy. This document is attached at Exhibit F.

9. Documents that have not been produced to NBME

Plaintiff designated the following documents that have not been produced to NBME (in discovery or the pretrial process):

ADHD DSM-5

MCAT Score 4/5/14

CBSSA 3/3/23

8. Technical issues

NBME raised a number of objections based on a document being incomplete or over-inclusive based on the pages that were designated by Plaintiff. NBME is hopeful that these issues will get worked out as Plaintiff finalizes his exhibits. NBME proposes deferring any Court action on these exhibits until trial, if needed. NBME is not attaching copies of these documents to this filing to avoid unduly burdening the Court, but NBME will have the documents available if the Court would like to view them during the pretrial conference.

Dated: May 12, 2023

Respectfully submitted,

/s/ Caroline M. Mew

Caroline M. Mew - admitted *pro hac vice*

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